

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 07-CR-0212(1) (PJS/JSM)

Plaintiff,

v.

ORDER

MICHAEL FIORITO,

Defendant.

This matter is before the Court on defendant Michael Fiorito's motion for appointment of counsel to assist him in appealing the Court's denial of his motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i).¹ Fiorito filed two pro se motions for compassionate release, after which, at Fiorito's request, the Court appointed counsel from the Federal Defender's Office to assist him. ECF Nos. 668–69. Fiorito now argues that his counsel was ineffective and contends that the Federal Defender's Office is conflicted, as it represented his codefendant during the underlying criminal proceedings. He asks that the Court appoint an attorney from outside the Federal Defender's Office to represent him on appeal.

¹Fiorito also asks for an extension of time in which to file an appeal. This request is moot, however, as the Court has already granted such an extension to the full extent permitted by Fed. R. App. P. 4(b)(4). *See* ECF No. 673.

Fiorito's request is denied. Counsel from the Federal Defender's Office stepped forward to begin assisting Fiorito four months before being formally appointed and it is apparent from the record that counsel was in communication with Fiorito during that time. *See* ECF No. 651, 656. Fiorito thus had plenty of time to ask for different counsel, and the fact that he has waited until now to raise the issue of a conflict smacks of gamesmanship.

Setting that aside, the Court is unwilling to appoint substitute counsel for two reasons. First, the Court sees little risk of a conflict in a post-conviction proceeding that has nothing to do with the validity of Fiorito's conviction but rather asks the Court to exercise its discretion to reduce a sentence based on Fiorito's current circumstances. Second, a defendant does not have a right to the assistance of counsel in § 3582(c) proceedings. *United States v. Brown*, 565 F.3d 1093, 1094 (8th Cir. 2009). Although the Court doubted that Fiorito, an able, vigorous, and prolific pro se litigant, actually needed counsel, it was willing to appoint counsel who had already been working with him. Having now ruled on—and in the process, thoroughly familiarized itself with—Fiorito's motions, the Court is confident that, if Fiorito is unwilling to accept the services of the Federal Defender's Office, he will have no problem representing himself on appeal. Fiorito's motion is therefore denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY ORDERED that defendant's motion for appointment of substitute
counsel on appeal [ECF No. 675] is DENIED.

Dated: August 10, 2020

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge